IN THE HIGH COURT OF BOMBAY AT GOA

CRIMINAL MISCELLANEOUS APPLICATION NO. 41 OF 2003

Shri Vithoba Babuso Adel,
aged about 50, married,
businessman, resident of
House No.126, Bansai,
Kakoda. ... Applicant.

versus

1. Shri Sudhakar Dinanath
   Fotto Dessai, major of
   age, married;

2. Shri Mahadev Prakash
   Parwar, major of age,
   Bamboo Worker;

3. Shri Gokuldas Babusso
   Adel, major of age,
   married, Aghriculturist;

4. Smt. Vimal Gokuldas
   Adel, Service;

5. Smt. Shali Sudhakar
   Fotto Dessai, married,
   housewife;

   All residents of Bansai,
   Kakoda, House No. not
   known. ... Respondents.

Mr. M. S. Sonak, Advocate for the Applicant.

Mrs. A. A. Agni, Advocate for the Respondents.

CORAM: P. V. HARDAS, J.

DATED: 7TH AUGUST,2003.

ORAL ORDER

This is an application for leave to file an Appeal against acquittal of the Respondents, who stand acquitted of the offences punishable under Sections 143, 147, 325, 427 r/w Section 34 of the Indian Penal Code by Judgment of the learned Judicial Magistrate First Class, Quepem, dated 11th December, 2002, in Criminal Case No.34/P/1996/B.

2. For the decision of this application of the Complainant, it is useful to refer to the facts of the case. Respondent Nos.1 and 5 are husband and wife having their dwelling house in the property of the Applicant/Complainant of which the Complainant was tenant. The Applicant/Complainant has also a dwelling house in the said property which was constructed prior to the construction of the house of Respondent No.1. In April, 1996, Respondent No.1 dug foundation for an extension to his house towards the southern side, allegedly without permission of the Applicant. In a surreptitious move the Respondents planned to raise the walls of the proposed construction and put up the roof under the cover of darkness without the Applicant coming to know of their design. On 30th May, 1996, at around 10 p.m., the Applicant, P.W.1, Vithoba Adel, went to stop the Respondents from going ahead with the construction. At that time, he was also accompanied by

his nephew P.W.5, Sanjay Naik. Respondent No.1 and Respondent No.3 are alleged to have abused the Applicant, P.W.1, Vithoba Adel. Thereafter, Respondents/Accused Nos.1, 2 and 3 are alleged to have thrown stones on the house of the Applicant as a result of which some tiles broke and also damage was caused to two asbestos sheets of the roof. P.W.5, Sanjay Naik, was taken for medical examination and was examined by P.W.4, Dr. Y. Reddy. The Applicant went to the Curchorem Police Station on the same night and lodged a complaint. The complaint is at Exh.PW1/A. Since the Police did not take any action, the Applicant filed the aforesaid complaint before the Magistrate.

3. Records and Proceedings have been called. P.W.1, Vithoba Adel, has admitted in his cross-examination that he had filed a Civil Suit against Accused Nos.1 and 5 and had prayed for an injunction restraining Accused Nos.1 and 5 from extending the residential house. The said application for temporary injunction was dismissed and he has preferred an Appeal against that Order. He has further stated that there is an Order directing the parties to maintain status quo. He has also admitted that Accused No.1 has filed a Civil Suit against him and his vendor seeking for a declaration that his Sale Deed is null and void and also for specific purpose of contract

regarding a plot of an area of 500 sq. metres which was agreed to be sold to Accused No.1. He has further admitted that when he was enquiring with Accused No.1 regarding the construction of the extension, there were no acid bottles or bamboo sticks in their hands. He has further stated that P.W.5, Sanjay Naik, was standing besides him. He has further stated that Accused No.1 came with the acid bottle from the side of his house on the western side. He has admitted that his son Dilip had been arrested by the Police when he had gone to lodge a complaint against the Accused. He has admitted that he was arrested when he had gone to Sanguem Court to seek the relief of Dilip. He has denied the suggestion that he had thrown acid on the brother of Respondent No.2 and since they had lodged a complaint against him, he has filed the present case. He has further admitted as true that Accused No.3 has filed several N.C. complaints against him. He has feigned ignorance regarding the number of masons employed by the Accused at the time of the incident. The learned Trial Court has also observed that there was overwriting in the complaint in respect of the date "3-5-96" and had directed the Complainant to produce the original complaint. There was omission in respect of the exact words used by the Accused in abusing the Complainant. He has also admitted that a case has been filed against him and P.W.5, Sanjay Naik and his other

son Dilip on the allegations that they had formed an unlawful assembly armed with sticks and acid bottle and had assaulted Accused Nos.4 and 5. When confronted with the original complaint which P.W.1, Vithoba Adel, states to have lodged on 30th May, 1996, he has admitted that the complaint was received by the concerned Police Station on 21st June, 1996 and bears the inward sheet of the Police Station dated 20th June, 1996. The original complaint is at Exh.PW1/A.

4. Complainant examined P.W.2, Dilip Baasso, whose evidence is similar to that of P.W.1, Vithoba Adel. In the cross-examination, he has admitted that the Police had filed a case against him and others on the allegations that they had assaulted Accused No.1 and six others. He states that he was arrested in that case. He further states that he was watching the incident from a distance of 10 to 12 metres. He has further stated that when P.W.1, Vithoba Adel/Complainant had gone to enquire with Accused No.1, Accused No.1 had the acid bottle in his hand and the other Accused had sticks in their hands. He has also admitted that the other Accused had not used the wooden sticks in assaulting anyone. He has further stated that he did not do anything but just stood watching the incident. He has further stated that when P.W.5, Sanjay Naik, was brought in the house by P.W.1, Vithoba

Adel, after acid was thrown on him, he just stood watching. An omission was brought out in the cross-examination that the other Accused were being armed with sticks. An omission was also brought out in respect of the fact that P.W.1, Vithoba Adel, had a bottle of acid in his hand when he was talking to Accused No.1. He has also stated that acid did not splash on P.W.1, Vithoba Adel or on any other person. He has denied the suggestion that after the Police had arrested him and others they had filed a false case.

5. P.W.3, Shashikant Adel, is the brother of P.W.1, Vithoba Adel. He has also deposed in the similar manner. However, in the cross-examination, he has admitted that there was a complaint against him and others for having assaulted Accused Nos.1 and 5. He has also admitted that P.W.1, Vithoba Adel, P.W.2, Dilip Baasso, P.W.5, Sanjay Naik and others were accused. He has further admitted that the allegation in that case was that on 30th May, 1996, at about 8.30 p.m. these prosecution witnesses had assaulted the Accused with sticks and had thrown acid. He states that he was watching the incident from a distance of 4 to 5 metres and states that P.W.2, Dilip Baasso was present along with him.

6. P.W.5, Sanjay Naik, after stating about the

incident of throwing acid on his face, states that on the day of the incident, he had decided to stay in the house of Accused No.1 and after hearing the noise had accompanied Accused No.1 outside. He has admitted that Accused No.1 filed criminal case against him, Complainant and his brothers which was disposed of. The criminal case was in respect of the same incident.

7. P.W.4, Dr. Y. Reddy, who had examined P.W.5, Sanjay Naik, states that he had examined P.W.5, Sanjay Naik on 30th May, 1996. He found the cornea to be burnt and the injury was grievous in nature. According to him, the injury could be caused by acid. The certificate is at Exh.PW4/A. In the cross-examination, he has admitted that the injury could be caused on a person if the acid falls in his eye while throwing acid on other persons.

8. On consideration of the entire evidence of the prosecution, the learned Trial Judge acquitted the Respondents by holding that no unlawful assembly had been formed and the act was not done in pursuance to the unlawful assembly. The learned Trial Court also found that the evidence of the prosecution witnesses could not be implicitly relied upon on the face of the fact that they were prosecuted in respect of the same incident of having assaulted the Accused and of having

thrown acid on them. P.W.4, Dr. Y. Reddy, has clearly admitted that an injury which was sustained by P.W.5, Sanjay Naik, could be caused to a person if he attempts to throw acid on another person and the acid falls in his eye. The allegations against the Complainant and his witness at the behest of the Accused was that acid has been thrown on the Accused.

9. I have given my anxious consideration to the findings recorded by the learned Trial Court and according to me, the view taken by the learned Trial Court is a possible view on the basis of the evidence on record. There is no perversity in the reasoning of the learned Trial Court so as to warrant any interference.

10. For the reasons aforestated, Criminal Miscellaneous Application No.41 of 2003 is dismissed. Leave refused.

P. V. HARDAS, J.

RD.